## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

TRAVIS LANCE EVANS,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO
	)	5:11-CV-00133-BG
	)	ECF
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
D ( 1	)	
Defendant.	)	

## REPORT AND RECOMMENDATION

Plaintiff Travis Lance Evans filed this action seeking judicial review of a decision of Defendant, the Commissioner of Social Security, denying her application for benefits under the Social Security Act. The United States District Judge transferred this case to the United States Magistrate Judge for further proceedings. Evans has not consented to proceed before the United States Magistrate Judge, and therefore the undersigned now files this Report and Recommendation.

Now before the court is Evans's unopposed Motion to Dismiss. (Docket No. 14.) In the motion, Evans states that he does not wish to prosecute this claim and that his attorney has conferred with defense counsel, who does not oppose the motion.

Pursuant to Fed. R. Civ. P. 41(a)(2), a court may grant a plaintiff's request to dismiss an action "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). When deciding whether to dismiss a case pursuant to Rule 41(a)(2), a court "should weigh the equities and make a decision which seems fairest under all the circumstances." *Am. Cyanamid Co. v. McGhee*, 317 F.2d 295, 298 n.4 (5th Cir. 1963) (quoting James Wm. Moore. et al., *Moore's Manual: Federal Practice* &

Procedure § 1907(1), at 1400 (1962)).

Having weighed the equities and all the circumstances, the undersigned hereby recommends that Evans's motion be **GRANTED** and that his case be **DISMISSED** without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

Dated: October 28, 2011.

United States Magistrate Judge